

## CCRB INVESTIGATIVE RECOMMENDATION

|  |   |                                     |  |  |   |
|--|---|-------------------------------------|--|--|---|
| Investigator:<br>Genevieve Lamont  | Team:<br>Squad #3   | CCRB Case #:<br>202005289           | <input checked="" type="checkbox"/> Force<br><input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> Discourt.<br><input type="checkbox"/> O.L. | <input type="checkbox"/> U.S.<br><input checked="" type="checkbox"/> Injury |
| Incident Date(s)<br>Tuesday, 07/28/2020 5:43 PM, Tuesday, 07/28/2020 6:27 PM | Location of Incident:<br>Second Avenue and East 25th Street;<br>Madison Avenue and East 25th Street | Precinct:<br>13                     | 18 Mo. SOL<br>1/28/2022  | EO SOL<br>5/4/2022   |   |
| Date/Time CV Reported<br>Wed, 07/29/2020 8:13 AM                             | CV Reported At:<br>CCRB   | How CV Reported:<br>On-line website | Date/Time Received at CCRB<br>Wed, 07/29/2020 8:13 AM                                  |  |   |

[illegible][illegible]

| Subject Officer(s)     | Shield | TaxID  | Command |
|------------------------|--------|--------|---------|
| 1. POM Timothy House   | 30423  | 946493 | SRG 1   |
| 2. POM Gregory Reisert | 14672  | 957077 | SRG 1   |
| 3. POM Brian Davis     | 25667  | 931624 | SRG 1   |
| 4. POM Luis Noguera    | 23888  | 927276 | SRG 1   |
| 5. An officer          |        |        |         |
| 6. Officers            |        |        |         |

| <b>Witness Officer(s)</b> | <b>Shield No</b> | <b>Tax No</b> | <b>Cmd Name</b> |
|---------------------------|------------------|---------------|-----------------|
| 1. DTS Craig Jacob        | 05974            | 935049        | SRG 1           |
| 2. POM Matthew Fahy       | 07248            | 954786        | SRG 1           |
| 3. POM James Masters      | 31130            | 930660        | 009 PCT         |
| 4. POM Ryan Carriddi      | 06607            | 951591        | SRG 4           |
| 5. POM Matthew Kwiecinski | 12413            | 928605        | SRG 4           |
| 6. POM Sean Holohan       | 14113            | 950595        | SRG 4           |
| 7. POM Jason Marzlock     | 26092            | 947803        | SRG 4           |
| 8. SGT Duane Barnes       | 04713            | 946626        | SRG 4           |
| 9. SGT Wilson Alba        | 04724            | 936109        | SRG 4           |
| 10. SGT Douglas Buffalino | 00682            | 946807        | 013 PCT         |
| 11. POM Jeffrey Zambrano  | 06596            | 936012        | 043 PCT         |
| 12. POM Joseph Hayes      | 15858            | 902796        | 043 PCT         |
| 13. SGT Christine Hirtzel | 01486            | 928810        | SRG 1           |
| 14. PO ERIC ENG           | 08165            | 938432        | SRG 04          |

| <b>Officer(s)</b>     | <b>Allegation</b>  | <b>Investigator Recommendation</b> |
|-----------------------|--|------------------------------------|
| A. Officers           | Force: Officers hit individuals with their bicycle.                              | [REDACTED]                         |
| B.POM Timothy House   | Force: Police Officer Timothy House hit an individual with a bicycle.            | [REDACTED]                         |
| C. Officers           | Force: Officers hit § 87(2)(b) with a bicycle.                                   | [REDACTED]                         |
| D. Officers           | Force: Officers used physical force against § 87(2)(b)                           | [REDACTED]                         |
| E. An officer         | Force: An officer hit § 87(2)(b) with a bicycle.                                 | [REDACTED]                         |
| F.POM Gregory Reisert | Force: Police Officer Gregory Reisert used pepper spray against individuals.     | [REDACTED]                         |
| G.POM Gregory Reisert | Force: Police Officer Gregory Reisert used pepper spray against § 87(2)(b)       | [REDACTED]                         |
| H. An officer         | Discourtesy: An officer spoke discourteously to individuals.                     | [REDACTED]                         |
| I.POM Brian Davis     | Discourtesy: Police Officer Brian Davis spoke discourteously to individuals.     | [REDACTED]                         |
| J.POM Brian Davis     | Abuse: Police Officer Brian Davis threatened Individuals with the use of force.  | [REDACTED]                         |
| K.POM Luis Noguera    | Discourtesy: Police Officer Luis Noguera spoke discourteously to individuals.    | [REDACTED]                         |
| L.POM Luis Noguera    | Abuse: Police Officer Luis Noguera threatened individuals with the use of force. | [REDACTED]                         |

## Case Summary

On July 29, 2020, § 87(2)(b) filed this complaint with the CCRB online as a complainant/witness. § 87(2)(b) and § 87(2)(b) all additionally filed a complaint about this incident as report non-witnesses on behalf of § 87(2)(b), § 87(2)(b), and unidentified individuals. § 87(2)(b) and § 87(2)(b) who were present during the incident, were identified as additional victims. This case was split into two additional CCRB cases: #202006710 and #202107262. Case #202006710 was separated from the initial case because of the allegations involving § 87(2)(b)'s arrest, which were closed as pending litigation. Case #202107262 was split from this case as its allegations occurred at a different location and currently under investigation [BR36]. The case was originally assigned to former investigator Zev Carter and subsequently reassigned to the undersigned investigator.

On July 28, 2020, at approximately 5:43 p.m., § 87(2)(b) was participating in a 2020 Police Brutality protest at the intersection of East 25<sup>th</sup> Street and Second Avenue in Manhattan. In addition to § 87(2)(b) and § 87(2)(b) were also participating in the protest. At that time, an unmarked NYPD van pulled up alongside the protest; five plainclothes officers exited the vehicle and arrested a protester, known to the investigation as § 87(2)(b). The crowd rushed to the van and, in response, officers from the Strategic Response Group (SRG), who were also on scene, moved in between the crowd and the police officers. The SRG officers used their bicycles to push the protesters back (**Allegation A: Force**; § 87(2)(g)). PO Timothy House of SRG 1 used his bicycle to push a protester from in front of the van (**Allegation B: Force**; § 87(2)(g)). Officers allegedly pushed § 87(2)(b) from behind with their bicycles, as well as allegedly struck him on the front of his body with their bicycles (**Allegations C and D: Force**; § 87(2)(g)). § 87(2)(b) was also allegedly struck with an officer's bicycle (**Allegation E: Force**; § 87(2)(g)). During the incident, PO Gregory Reisert of SRG 1 deployed his pepper spray, which made contact with § 87(2)(b) and other protesters (**Allegations F and G: Force**; § 87(2)(g)). § 87(2)(b) alleged that an officer said, "Get the fuck back assholes," during the incident (**Allegation H: Discourtesy**; § 87(2)(g)). PO Brian Davis of SRG 1 also used profanity during the incident, telling protesters, "Get the fuck back... Fuck out of here. Get the fuck out of here" (**Allegations I: Discourtesy**; § 87(2)(g)). PO Luis Noguera of SRG1 also told protesters, "Get the fuck back" during the incident, while pointing a can of pepper spray at protesters (**Allegation J and K: Discourtesy and Abuse of Authority, respectively; Miscellaneous**; § 87(2)(g)).

Only § 87(2)(b) was arrested during this incident; no other arrests were made, and no summonses were issued to the protesters.

The investigation received multiple clips of cell phone footage of the incident, collected from various Instagram and Twitter accounts [BR01 through BR05]. The investigation also received body-worn camera (BWC) footage from PO House, PO Reisert, PO Davis, PO Noguera, PO Craig Jacob from SRG 1, PO § 87(2)(b) Fahy from SRG 1, PO Ryan Carriddi from SRG 4, PO § 87(2)(b) Kwiecinski from SRG 4, PO Sean Holohan from SRG 4, PO Eric Eng from SRG 4, PO Jason Marzlock from SRG 4, PO Duane Barnes from SRG 4, PO Wilson Alba from SRG 4, PO § 87(2)(b) Masters from the 9<sup>th</sup> Precinct, PO Douglas Buffalino from the 13<sup>th</sup> Precinct, PO Jeffrey Zambrano from the 43<sup>rd</sup> Precinct and PO Joseph Hayes from the 43<sup>rd</sup> Precinct [BR06]. The investigation also received TARU footage from the incident [BR07]. A Reznick Request was sent for a concurrent Internal Affairs Bureau investigation (IAB case #FI-2020-634) for § 87(2)(b)'s incident, for which the investigation received the case file and obtained additional cellphone footage [BR08].

PO Noguera has since retired from NYPD.

## Findings and Recommendations

**Allegation (A) Force: Officers hit individuals with their bicycles.**

**Allegation (B) Force: Police Officer Timothy House hit § 87(2)(b) with a bicycle.**

**Allegation (C) Force: Officers hit § 87(2)(b) with a bicycle.**

**Allegation (D) Force: Officers used physical force against § 87(2)(b)**

**Allegation (E) Force: An officer hit § 87(2)(b) with a bicycle.**

**Allegation (F) Force: Police Officer Gregory Reisert used pepper spray against individuals.**

**Allegation (G) Force: Police Officer Gregory Reisert used pepper spray against § 87(2)(b)**

The following facts are undisputed: on July 28, 2020, a group of protesters was marching in as part of a 2020 Police Brutality protest. As the group reached East 25<sup>th</sup> Street and Second Avenue in Manhattan, plainclothes officers from the Warrant Squad drove up to the group in an unmarked van. The Warrant Squad officers arrested § 87(2)(b) for an outstanding warrant for property damage. As § 87(2)(b) was arrested, the rest of the protesters surrounded the Warrant Squad officers, at which point SRG officers intervened to assist. It is undisputed that during this incident, SRG officers used their bicycles to push protesters back and that pepper spray was also deployed.

§ 87(2)(b) testified that during the protest, he and other cyclists were riding their bicycles in a line ahead of most of the marchers. As he and the marchers turned from East 25<sup>th</sup> Street onto Second Avenue, a grey van drove past the crowd; the Warrant Squad officers got out of the van and arrested § 87(2)(b). § 87(2)(b) stated that he was not aware the vehicle belonged to NYPD. The rest of the protesters rushed to the officers and tried to stop the van from driving away by surrounding it. SRG officers, whom § 87(2)(b) identified as such from past protest experience, rode towards him and the protesters on bicycles. They tried to surround the protestors, who were still surrounding the van. The SRG officers formed a line and began to strike protestors with their bicycles. Shortly after that, the van drove away with § 87(2)(b). The SRG officers had formed a line facing the protesters, however § 87(2)(b) and approximately ten other protestors were south of the line, behind the officers. The protesters were screaming at the officers; § 87(2)(b) did not observe the protesters take any physical action towards the officers. § 87(2)(b) attempted to rejoin the rest of the protesters, walking alongside his bicycle and using it to push in between the line of officers. He stated that he did this by attempting to push the officers' bicycles out of the way and walk in between them. He did not remember if he said anything during that time. As he did that, § 87(2)(b) felt officers push him from behind with their bicycles in quick succession, pushing him into the officers directly in front of him. § 87(2)(b) made it to the other side of the line and turned around. Officers then started to hit him with bicycles on the front of his body. § 87(2)(b) was struck approximately four times in total. He was unable to provide descriptions of the officers who pushed and hit him with their bicycles. § 87(2)(b) saw that officers had pepper spray containers on their persons but did not see any officer carrying those containers in their hand. He did not see officers point pepper spray cans at protestors. He did not smell any pepper spray or otherwise detect that officer had used it [BR09].

§ 87(2)(b) stated that they and the other protesters were taking a break from marching at the intersection of Second Avenue and East 25<sup>th</sup> Street. The march was non-violent and celebratory, with no property damage or other violation committed. They estimated that approximately 100 protesters were present during the march. During that break, § 87(2)(b) was arrested. The officers did not announce themselves as such and § 87(2)(b) did not see any identification displayed. Approximately one hundred protestors ran to the van as they saw § 87(2)(b)'s arrest. § 87(2)(b) started to record the incident on their phone and broadcasted it on Instagram Live. 12 NYPD officers riding bicycles rode towards the scene, surrounding the protesters. § 87(2)(b) was not aware of these officers prior to this. The officers pushed the protestors back with their bicycles

approximately ten times. § 87(2)(b) could not name any of the other people who the officers pushed or describe the officers, aside from describing them as white males. At one point, an officer used his bicycle to push § 87(2)(b) the teeth on the chain ring of the officer's bicycle lacerated their upper-left leg near the rear of their knee, drawing blood and causing it to scar. They described this officer as a white male, standing 5'11" tall, with a heavy build, in their mid-thirties. They did not know whether any officers used bicycles to strike § 87(2)(b) or any other protesters. At one point, an officer deployed pepper spray at the crowd. § 87(2)(b) was approximately two feet away from this officer and the spray made contact with their eyes. They lost their vision and left the crowd as a result. They described that officer as a white male with a heavy build, wearing a uniform with shorts. They stated it was possible that that officer was the same officer who struck them with a bicycle, but they were not sure. They did not witness an officer use pepper spray against anybody else but believed that it happened to other people. § 87(2)(b) could not see anything due to the pepper spray for approximately one hour. Two individuals helped § 87(2)(b) by pouring water and milk in their eyes. When § 87(2)(b) regained their vision, they realized that they were sitting on a bench near a Shake Shack in Madison Square Park [BR10].

§ 87(2)(b) was uncooperative with the investigation [BR33].

The investigation attempted to locate additional victims through other arrests conducted at East 25<sup>th</sup> Street and Second Avenue. The investigation was unable to identify other victims who were at the incident location and was only able to find arrests made at East 25<sup>th</sup> Street and Madison Avenue [BR37].

While multiple videos were taken by witnesses on scene, in addition to the officers' BWC footage, a video posted to Instagram by the user § 87(2)(b) most clearly depicts the incident. The video was recorded from an aerial view by § 87(2)(b) in one of the surrounding buildings (the precise location is not known to the investigation). The video captures the arrest of § 87(2)(b). At 00:18 seconds, multiple protesters run towards the Warrant Squad officers, surrounding them. It does not appear that the protesters and the officers have any physical contact. At 00:24 seconds, SRG officers ride through the crowd towards the Warrant Squad officers. They form a line surrounding the van in which the Warrant Squad officers arrive and facing the crowd. At 00:42 seconds, § 87(2)(b) stands in front of the van as it is attempting to drive away. An officer on a bicycle rides towards this individual and uses his bicycle to push him out of the vehicle's path. From 00:47 seconds to 00:52 seconds, a few protesters can be seen pushing forward towards the officers and some officers use their bicycles, held horizontally, to push these protesters back. It does not appear that any of the other protesters fall over. No other force is captured. At 00:53 seconds, the van drives away, and the camera pans away from the protest to follow it leaving the vicinity. At 1:21 minutes, the camera pans back to the crowd. A line spanning the length of the street is seen in front of the SRG officers. They advance forwards as the officers move back in response. From 1:21 minutes to 1:54 minutes, the protesters continue advancing, pushing the officers back towards the sidewalk. A couple of officers can be seen using their bicycles in a similar fashion as before to push the protesters back. At 1:50 minutes, a piece of debris is thrown at the officers, although it is unclear what it is or if it makes contact with any of the officers. At 1:55 minutes, an officer, presumably PO Reisert, deploys pepper spray as he falls to the ground. No other officer is seen deploying their pepper spray for the duration of the video. At 2:00 minutes, additional uniformed officers arrive on scene and join the line of SRG officers. The protesters back up from the officers and begin to walk away. There is no further physical interaction between the officers and the protesters [BR05].

PO House testified that he was on the northeast corner of Second Avenue, monitoring the ongoing protest, when § 87(2)(b) was arrested. Other protesters surrounded the Warrant Squad officers, but

PO House did not see them make physical contact with those officers. PO House and the other SRG officers decided to assist the Warrant Squad officers as they were outnumbered by the protesters. He rode his bicycle towards the van, which was approximately 50 to 60 feet away, along with the rest of the SRG officers. Sgt. Christine Hirtzel of SRG 1, the supervisor on scene, did not issue any commands about what actions to take regarding the van, but PO House stated that all the officers felt collectively that the Warrant Squad officers were “in distress.” Upon reaching the van, PO House observed a male blocking the front of the van with his body, preventing it from leaving. PO House rode towards that individual and, as he dismounted, used the front tire to push the male out the van’s path. He believed he hit this individual in his hip or midsection, based on how he was positioned. He stated that he did this to move the individual out of the van’s path. He did not have any interaction with the individual and did not recall if he yelled for him to move back. The male moved back, remaining upright, but PO House did not know if it was due to the force of bicycle or if he chose to move. As the van left the scene, the protesters continued to push against the officers and attempted to grab their bicycles. PO House remounted his bicycle to leave the scene but, upon observing this, cycled around the front to join the other officers. He joined the “mobile fence line” of the SRG officers, in which all the bicycles were lined together to create a barrier between the officers and the protesters. The whole protest group was behind the line, but there were two to four protesters directly in front of PO House. In addition to protesters pushing the officers and pulling at their bicycles, PO House saw protesters throw plastic water bottles at officers and one individual threw their skateboard. He did not see any item hit any officers. At some point, the officers tried to move the crowd back with their bicycles, but could not, due to the size of the crowd. PO House used his bicycle to push protesters back to create distance so he and the other officers could leave the scene. At one point, a black female wearing a green top ran towards him, and he used his bicycle to push her back. PO House stated that § 87(2)(b) whom he was familiar with from a previous protest, was using his bicycle to push the officers during the incident. He did not push § 87(2)(b) from behind with his bicycle nor did he see any other officers do so. After a few minutes on scene, PO House took out his can of pepper spray as a precautionary tactic. He did not deploy his pepper spray at any time. He did not know if any officers deployed their pepper spray during the incident. Backup officer arrived on scene approximately four minutes after the van left. He did not know how many officers arrived for backup, as he only heard sirens and saw a few vans approaching from behind. The protesters then left the scene approximately five minutes after the backup officers arrived, walking in the opposite direction of the officers [BR11].

PO Davis testified that he and the SRG officers had been trailing the protest crowd for multiple hours upon reaching East 25th Street and Second Avenue in Manhattan. While he and the other SRG officers were on break at the intersection, § 87(2)(b) was arrested. PO Davis was not aware that the Warrant Squad officers were in the area and recognized them as police by their shields. It was not communicated to PO Davis or any other officer that an arrest would be affected during the protest. As the Warrant Squad officers arrested § 87(2)(b) the protesters converged on the officers. The protesters became hostile, throwing punches, swinging signs, and throwing bottles at the Warrant Squad officers. The Warrant Squad officers attempted to keep the protesters back but were outnumbered; PO Davis described them as being “overrun.” The SRG officers, who were approximately 30 feet from the Warrant Squad, got on their bicycles and went to assist the officers. Upon reaching the Warrant Squad, SRG officers made a horizontal line, standing side by side. They held their bicycle horizontally at chest level with both hands, similar to a baton. PO Davis and the other officers then pushed forward with their bicycles to keep the protesters from the Warrant Squad. PO Davis stated that the SRG officers were trained to do this and received this training at SRG 3 Command in the Bronx. SRG officers also told the crowd to get back while doing this. PO Davis did not use any other force aside from using bicycle to push back protesters. He did not push § 87(2)(b) from behind and did not observe any officer do so. Once the van left, one of the SRG officers, PO Davis did not know who, called for backup, as the crowd continued to advance on the

officers. At one point, oleoresin capsicum (OC) spray was deployed, but he did not recall who did this. He did not recall having his OC spray out at any point. He did not see § 87(2)(b) or any other protesters have contact with OC spray. After approximately three minutes in the lines, protesters overran officers and moved behind them. § 87(2)(b) in black went behind PO Davis. PO Davis first became aware of this person when he felt someone attempt to grab his gun and pull it out of the holster. This individual was unable to do so due to the safety lock. PO Davis looked to his right, as he thought him and PO House got “tangled up,” and then looked to his left and saw that this individual then grabbed his bicycle. PO House and the individual wrestled with the bicycle and went to the ground. After standing up, he immediately realized he had been injured, as he could not place his full weight on his right leg. He did not know what happened with that individual. Over 50 officers for back up arrived six minutes later. PO Davis did not know what actions were taken by the backup officers, as he was brought to § 87(2)(b) Hospital for treatment, where it was determined that he had a torn anterior cruciate ligament and meniscus tendon. He went on line of duty injury leave for several months and has remained on restricted duty [BR12]. PO Davis prepared a Threat, Resistance, and Injury (TRI) report for the incident, which was consistent with his testimony, stating that as he was assigned to the SRG bicycle team, an “unknown individual approached PO Davis from behind and pulled at his dept. bicycle...[he] was suddenly off balance and fell to the ground” [BR13]. An AIDED report was prepared for PO Davis, detailing that he sustained a laceration on his left leg as well “substantial pain” to his right leg as a result of falling during the incident [BR14].

PO Reisert testified that he and the other SRG officers went to assist the Warrant Squad officers after § 87(2)(b) was arrested. Upon reaching the van, which was approximately 100 feet away, the SRG officers made a mobile fence line with their bicycles, placed horizontally tire to tire, to keep the protesters back so that the van could leave the scene. The officers ordered the crowd to get back, which they were not compliant with. The protesters began pushing on the officers’ bicycles, yelling at them to get back. PO Reisert stated that the majority of the protesters were doing this. At one point, the protesters attempted to grab the bicycles from the SRG officers. PO Reisert did not know how many protesters did this but stated that it was “a handful.” No protesters attempted to take his bicycle. He did not have any physical interaction with any of the protesters. He did not know of any officers who used their bicycles to push the officers, as the crowd was so large. At one point, protesters moved behind the officers’ mobile fence line, but PO Reisert did not know when or how many. After a few seconds of being in the mobile fence line, PO Reisert fell to the ground with his bicycle. He did not know exactly how he ended up on the ground but believed that he was pushed or shoved by either protesters or another officer. At this point, he had his can of pepper spray in his right hand. He stated that this was a preemptive safety measure, given the size of the crowd, in case he needed to deploy it for himself or another officer. As he fell to the ground, he accidentally discharged the pepper spray, as his hand was on top of the button, which he pressed as an involuntary reaction to falling. He did not know if the spray made contact with anyone. He did not know if any other officer discharged their pepper spray. After he fell to the ground, he felt pain in his right ankle. He got back up and joined the line. Backup officers responded to the scene within a few minutes. When backup arrived, the crowd went to 25<sup>th</sup> Street towards Madison Avenue; PO Reisert remained at East 25<sup>th</sup> and Second Avenue to receive medical attention. He did not see any other arrests conducted aside from § 87(2)(b)s. He sustained swelling and a contusion to his ankle from the fall on his bicycle. He received medical treatment from EMS on scene and was transported to the hospital, although he did not recall which one. PO Reisert went LOD for a couple of weeks as a result of his injury [BR15]. PO Reisert prepared a TRI as well, which is consistent with his statement, stating that while he was at the protest, he and other officers were “engaged by a large violent crowd who began to push the officers...PO Reisert suddenly fell over a bicycle...which caused him to have an accidental discharge of his OC spray” [BR13]. An AIDED report prepared for PO Reisert detailed that the officer was “intentionally and violently” pushed from behind during

the incident, sustaining lacerations to his left leg [BR14].

A TRI report for § 87(2)(b) was prepared by Inspector Edward Armstrong of the Detective Bureau Investigation Unit [BR 16]. The report notes that § 87(2)(b) alleged that they were sprayed with pepper spray during the incident by an unknown officer. No TRI report was prepared for § 87(2)(b) for this incident [BR13 and BR16].

PO House's BWC footage shows him and other SRG officers riding into the middle of the intersection and form a line in front of an unmarked minivan at 00:36 seconds. At 1:05, PO House turns around and pushes § 87(2)(b) out of the way of the van while saying, "Back up." The minivan drives away. PO House rides away from the group of protestors and circles back to it. At 1:23, he uses his bicycle to separate two protestors. The protestors line up against one another. At 1:46 minutes, one white female in a white sleeveless shirt holds a skateboard horizontally at chest-level and says, "Move back," repeatedly. PO House moves back onto the sidewalk on his feet. At 2:01 minutes, a protestor grabs PO House's bicycle handlebar as he moves back. An object flies from left to right in front of the screen and does not appear to hit anyone. At 2:12 minutes, a black female with a megaphone says, "Move back," apparently directed at PO House. She repeats this as she approaches PO House. PO House approaches her and she walks backward while repeating the phrase. It does not capture any other force on scene [BR17].

PO Davis's BWC footage opens with the officer standing directly in front of a crowd of protestors with his bicycle positioned in front of him. He begins to walk backward, and protestors close the gap in between them. At 0:28 seconds, PO Davis picks up his bicycle and appears to use the rear wheel to strike a protestor. PO Davis then walks toward the protestors and falls forward onto the ground. It does not show him using any other force with the protestors [BR18].

PO Reisert's BWC footage opens with him riding his bicycle away from the crowd, calling for additional units over the radio twice, and returning to the crowd of protestors and officers. The officers and protestors are within arm's reach of one another, and many protestors are yelling angrily at the officers. At 2:12 minutes, PO Reisert holds a can of pepper spray in his hand and points it toward the crowd before falling over his bicycle at 2:16 minutes. The angle of PO Reisert's BWC does not show if the pepper spray deploys. Officers then make a line across Second Avenue. The protestors begin to walk away from the line of officers. Officers move their line closer to the intersection with East 25th Street. At 8:10, an officer asks, "Did someone spray?" to which PO Reisert confirms that he did. Most of the protestors vacate the intersection. SRG officers mount their bicycles and begin riding away from the intersection [BR19]. No other BWC footage shows officers deploying their pepper spray [BR06].

Other officers' BWC footage shows various officers on their bicycles moving in between protestors and forming a line facing the protestors. It does not depict any of the alleged force used against § 87(2)(b) and § 87(2)(b) [BR06].

As per NYPD Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service (MOS) or third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In determining whether the use of force is reasonable, MOS should consider the nature/severity of the crime/circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm to the subject, members of service and/or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to the MOS, subject's violent history (if known), presence of hostile crowd or agitators, and if the subject is apparently under the influence of a stimulant/narcotic which would affect pain tolerance



or increase the likelihood of violence [BR20].

As per NYPD Patrol Guide Procedure 221-07, O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest of lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of service, or other persons. Members of service should avoid discharging O.C. pepper spray indiscriminately over a large area for disorder control [BR34].

The NYPD Driver Training Bicycle Unit's 3-Day Bicycle Training guide notes in its "Use of Force" section that an officer may use their bicycle to defend or protect themselves against physical threat and that the bicycle may be used as an extension of an officers' gun belt. It does not provide any other specific instructions, directing officers to follow the procedures outlined in Patrol Guide series 221(use of force) [BR35].

While force was alleged by § 87(2)(b) and § 87(2)(b) specifically, BWC and cellphone footage from the incident showed that multiple officers hit unidentified protesters with their bicycles. It was therefore determined that a force allegation would be pled against officers for this. Additionally, while § 87(2)(b) was uncertain about which officer pepper sprayed him, the cellphone footage shows that only one officer on scene deployed their pepper spray during the incident. As PO Reisert acknowledged that he used his pepper spray during the incident, the investigation determined that PO Reisert pepper sprayed § 87(2)(b). Therefore, two pepper spray allegations were pled against him, one stemming from § 87(2)(b)'s testimony and one for the other individuals.

§ 87(2)(g)

PO House, PO Davis, and PO Reisert all testified that they, along with other officers, used their bicycles to push protesters to create distance between themselves and the protesters, who outnumbered them significantly. Officers' BWC video shows this at multiple points, in addition to officers issuing orders for the protesters to get back, which they do not comply with. Cellphone footage from Instagram shows how significantly more protesters there were on scene, outnumbering the officers by dozens. At one point, the cellphone footage also shows the protesters crowding the officers until they are pushed back towards the sidewalk. § 87(2)(g)

Civilian cellphone footage posted to Instagram and PO House's BWC captures the officer's pushing a protester out of the way from the Warrant Squad van. § 87(2)(g)

While it is undisputed that officers on scene used their bicycles to push protesters back, none of the BWC or other footage from the incident captures officers doing this to § 87(2)(b) or § 87(2)(b). All interviewed officers denied using force against § 87(2)(b) and § 87(2)(b) and did not see other officers do so. Additionally, § 87(2)(b) and § 87(2)(b) were unable to provide identifiable descriptions of the officers. § 87(2)(b), § 87(2)(g)

While it is undisputed that PO Reisert used his pepper spray, the officer maintained that he accidentally did so as a result of falling to the ground. PO Reisert's BWC does show that he falls to the ground and the Instagram footage confirms that pepper spray was deployed. As per Patrol Guide Procedure 221-07, officers should refrain from deploying OC pepper spray indiscriminately for the purposes of crowd control. The video shows that PO Reisert did not deploy his pepper spray against a specific subject, but that it was rather discharged over the crowd. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (H) Discourtesy: An officer spoke discourteously to individuals.**

**Allegation (I) Discourtesy: Police Officer Brian Davis spoke discourteously to individuals.**

**Allegation (J) Abuse of Authority: Police Officer Brian Davis threatened individuals with the use of force.**

§ 87(2)(b) testified that he heard officers saying, "Get the fuck back, assholes," during the incident but could not attribute the quote to any specific officer. He did not hear any other profanity during the incident [BR09].

PO Davis testified that he did not make the alleged statement and did not hear any officers do so. He stated that it was possible that he cursed on scene, when the crowd was converging, but did not recall if he did this or what he said. He did not recall any other officer on scene using profanity. PO Davis stated that he had his pepper spray out during the incident. He clarified that this was due the injury he sustained during the incident, during which someone attempted to grab his firearm from behind him. He stated that, as he was injured, he felt unable to defend himself and took out his pepper spray to keep the protesters back. PO Davis was only equipped with his pepper spray and did not have a taser or a baton on him. His only other tool was his firearm, which he stated he did not want to draw. As the crowd continued to approach him, he was concerned for his safety. In addition, PO Davis was also concerned for his safety based on the prior physical altercation between the protesters and the officers when § 87(2)(b) was arrested, as well as a protester attempting to grab his firearm. PO Davis did not deploy his pepper spray during the incident [BR12 and BR38].

PO House did not make the alleged statement and did not hear any officer do so [BR11].

PO Reisert testified that he did not make the alleged statement and did not hear any officer do so. He did not recall if he or any officer on scene used any profanity [BR13].

PO Davis's BWC footage shows him falling to the ground at 00:28 seconds, before he subsequently gets back up and picks up his bicycle. At 1:04 minutes, he takes out a can of pepper spray, holding it in his hand. He tells a group of protesters, "Get the fuck back." At 1:38 minute, PO Davis says, "Fuck out of here. Get the fuck out of here. That's right, that's right, I'm about it. I'm about it. I ain't no regular cop." He continues to hold his pepper spray while doing so. It appears that he is interacting with a black male in a white tee shirt and dark shorts when saying this [BR18].

No BWC, cellphone, or other footage captures any officer making the statement, "Get the fuck back assholes" [BR01 through BR08].

Upon reviewing his BWC footage during the interview, PO Davis confirmed that he heard an

officer make the statement, “Get the fuck back,” but did not recognize the officer’s voice and testified it was not him. He acknowledged making the statement “Get the fuck out of here” and telling the protesters, “That’s right, that’s right, I’m about it. I’m about it. I ain’t no regular cop”. He stated that he made this statement because the crowd was converging on him and that one individual was inciting the crowd. He believed that these statements would be forceful enough so that the protesters would step back [BR12].

A line of duty (LOD) Injury report was prepared for PO Davis, which stated that while PO Davis was engaged with the protest crowd, he entered a struggle with an unknown individual. During the struggle, he went to the ground, which caused him “substantial pain” and an injury to his right leg and a laceration on his left leg [BR39].

As per NYPD Patrol Guide Procedure 221-07, O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest of lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of service, or other persons. Members of service should avoid discharging O.C. pepper spray indiscriminately over a large area for disorder control [BR34].

As per NYPD Patrol Guide Procedure 203-09, members of service must interact with members of the public in a professional manner [BR21]. As per DAO-DCT Case #2017-17276, it was ruled that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent confrontation [BR22].

§ 87(2)(b) only alleged one discourtesy allegation, which was pled against an officer. PO Davis’s BWC footage captured PO Davis using profanity and a discourtesy allegation was pled against him from this.

As § 87(2)(b) could not attribute the statement, “Get the fuck back assholes” to any specific officer and no video footage from the incident captured such a statement, the investigation was unable to identify a subject officer for the discourteous language. § 87(2)(g)

§ 87(2)(g)

The investigation found that PO Davis was justified in having his pepper spray out during the incident. Prior to doing so, PO Davis fell to the ground; while it is unconfirmed what caused this, PO Davis did injure his right leg as a result. He stated that this injury limited his ability to defend himself from the crowd, which was currently engaged in a physical confrontation with the crowd. In addition, PO Davis testified that he was not equipped with a Taser or a baton, and pepper spray was the only other tool he could use to defend himself apart from his firearm, which he was not going to draw at the crowd. § 87(2)(g)

**Allegation (K) Discourtesy: Police Officer Luis Noguera spoke discourteously to individuals.**  
**Allegation (L) Abuse of Authority: Police Officer Luis Noguera threatened individuals with the use of force.**

This allegation was pleaded from video footage of the incident, found on Twitter.

Cellphone footage, posted on Twitter by the user @feistymexarican, opens with SRG officers forming a line in front of the protesters. At 0:09 seconds, PO Noguera says, “Get the fuck back!” and points his can of pepper spray at individuals off screen and the person recording the video. He moves back and forth in front of the camera from 00:10 seconds until the video ends. None of the protesters have any physical interaction with PO Noguera or any other officer on scene. The other SRG officers remain in a line in the street. No other officers in the video have their pepper spray cans out. It is unclear at what point in the incident the video was taken [BR03].

As per the Department of Advocates Office, PO Noguera retired from the NYPD on October 10, 2020 [BR23]. As a result, he was not interviewed by the CCRB.

From the video, it is unclear what the context of the protest is at the moment the video is taken. Therefore, the investigation could not determine whether PO Noguera was justified in threatening force or using discourtesy based solely on the video. As the officers is no longer a member of service, the investigation was unable to obtain testimony regarding these allegations. It is therefore recommended that **Allegations K and L** be closed as **Miscellaneous – Subject Retired**.

**Civilian and Officer CCRB Histories**

- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- PO Reisert has been a member of service for seven years and has been a subject in two prior CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
  - PO Reisert is a subject in one open CCRB complaint, case #202104332, in which a physical force allegation is pled against him. The case is currently under investigation.
- PO Davis has been a member of service for 19 years and has been a subject in ten prior CCRB complaints and 19 allegations, of which one allegation was substantiated.:
  - Case #200708090 involved substantiated allegations of property damage against PO Davis. The Board recommended charges and the NYPD did not impose any disciplinary action. § 87(2)(g) [REDACTED]
- PO House has been a member of service for 14 years and has been a subject in five prior CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of January 31, 2022, neither § 87(2)(b) or § 87(2)(b) has filed a Notice of Claim with the New York City Office of the Comptroller for this incident [BR27 through BR29, respectively].
- § 87(2)(b)
- According to OCA, § 87(2)(b) has no history of convictions in New York City [BR31].
- According to the OCA, § 87(2)(b) has no history of convictions in New York City [BR32].

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Squad: 3

|               |                         |                            |                   |
|---------------|-------------------------|----------------------------|-------------------|
| Investigator: | <u>Genevieve Lamont</u> | <u>SI Genevieve Lamont</u> | <u>03/31/2022</u> |
|               | Signature               | Print Title & Name         | Date              |

|               |                   |                      |                   |
|---------------|-------------------|----------------------|-------------------|
| Squad Leader: | <u>Olga Golub</u> | <u>IM Olga Golub</u> | <u>04/01/2022</u> |
|               | Signature         | Print Title & Name   | Date              |

|           |           |                    |         |
|-----------|-----------|--------------------|---------|
| Reviewer: | <u></u>   | <u></u>            | <u></u> |
|           | Signature | Print Title & Name | Date    |